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Church of Scientology of California

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Attorney for Intervenor Mary Sue Hubbard

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,	)	NO. C 420 153
)	
Plaintiff,)	
)	
vs.	)	DECLARATION OF
	)	ERIC M. LIEBERMAN
	)	IN SUPPORT OF
GERALD ARMSTRONG, DOES 1 THROUGH	)	PLAINTIFF'S MOTION
10, INCLUSIVE,	)	FOR CLARIFICATION
	)	AND/OR
Defendants.	)	RECONSIDERATION
)	
_____)	
MARY SUE HUBBARD,	)	Date: November 29, 1988
	)	Time: 9:00 a.m.
Intervenor.	)	Dept. 56
_____)	

I, Eric M. Lieberman, declare:

1. I am a member of the firm of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. I served as chief counsel on appeal for the plaintiff in this case. I also served as chief counsel for the Church of Scientology of California in the federal court litigation of United States v. Zolin which is referred to in this declaration, infra. I am fully familiar with the facts and judicial proceedings in both cases.

2. The instant case was brought principally to recover a large body of private and privileged documents which defendant Armstrong had taken from the Church.

3. Shortly after the initiation of this lawsuit, Judge Cole of this court issued a temporary restraining order and then a preliminary injunction, prohibiting Armstrong from further copying or disseminating the documents and requiring him to submit them to the clerk of the court, under seal.

4. Among the documents taken by Armstrong and turned over to the court, under seal, were two tape recordings of meetings between representatives of the plaintiffs and their attorneys concerning corporate and tax matters. These tape recordings came to be known as the MCCS tapes. Subsequent testimony established that the MCCS tapes had come into Armstrong's hands inadvertently and without knowledge of the Church when a secretary gave the tapes to Armstrong for recording purposes, thinking the tapes were blank.

5. The tapes remained under seal up to the time of trial in this case, and, as I shall explain below, subsequent thereto.

6. At the time of trial, Armstrong's attorney attempted to introduce the tapes into evidence. The Church's objection on the basis of the attorney-client privilege was upheld by Judge Breckenridge, and the tapes were not introduced into evidence or referred to in the course of testimony at trial. Instead, Judge Breckenridge explicitly held that the tapes were to remain under seal. The tapes were marked as exhibit 500-CCCC (500-5C's), for identification only. In Judge Breckenridge's Memorandum of Intended Decision of June 20, 1984, he specifically noted at page 2, footnote 1 that the exhibit was not accepted into evidence, and that the exhibit was to remain under seal.

7. Subsequent to trial, on September 25, 1984, the Department of Justice sought limited access to a number of sealed exhibits, including the MCCS tapes, for use in a civil lawsuit then pending in Washington, D.C. The Church objected to disclosure of the MCCS tapes on the basis of attorney-client privilege, and submitted declarations of three individuals, including James M. A. Murphy of the firm of Rosenfeld, Meyer & Susman, who participated in the meetings. The declarations demonstrated that the meetings were bona-fide attorney-client conferences concerning tax and corporate matters, that there was no discussion of a then-present or ongoing crime or fraud, and

that the tapes came into Armstrong's possession without the knowledge or authorization of the Church or any of its officers, directors, or managing agents. I have reproduced and attach hereto as Exhibits A, B and C, copies of the declarations of Mr. Murphy, Lisa Britowich, and Barbara De Cello; copies of these declarations were previously submitted to the federal district court in the Zolin case, which also involved the privileged status of the MCCS tapes. I discuss the Zolin case at greater length, infra.

8. Judge Breckenridge once again upheld the attorney-client privilege with respect to the MCCS tapes. He found that there was no knowing or intelligent waiver of the privilege, and that the crime-fraud exception to the privilege did not apply. See Reporter's Transcript of Proceedings of February 11, 1985, pp. 74-76 (Exhibit D, hereto). He therefore refused to grant the government limited access to the tapes. Order of February 11, 1985 (Exhibit E, hereto).

9. While the proceedings described in paragraphs 7 and 8 above were pending before Judge Breckenridge, the Internal Revenue Service served an administrative summons upon the clerk of this Superior Court, directing the clerk to turn over to the IRS various sealed documents from this case, including the MCCS tapes. When the clerk refused to comply because of the existence of the sealing order, the IRS filed a federal court action on January 22, 1985, seeking to enforce the summons. That action is what is now referred to as United States v. Zolin.

The Church and Mary Sue Hubbard intervened in the federal lawsuit, and interposed various objections, including the attorney-client privilege with respect to the MCCS. The Church again submitted the declarations of James Murphy (of Rosenfeld, Meyer and Susman), Lisa Britowitch, and Barbara DeCelle, which are attached hereto as Exhibits A, B and C. The declarations established beyond peradventure the existence of the attorney-client privilege.

10. The federal court, per District Judge Harry Hupp, upheld the privilege with respect to the MCCS tapes on the same basis as did Judge Breckenridge of this court. On the question of the purported crime-fraud exception, Judge Hupp reviewed in camera extensive excerpts of the tapes, and found no evidence of an ongoing or present crime or fraud. Accordingly, he denied enforcement of the IRS summons with respect to the MCCS tapes. See Exhibit F, hereto.

11. On appeal, a panel of the United States Court of Appeals for the Ninth Circuit upheld Judge Hupp's determination with respect to the MCCS tapes. Relying exclusively on the declarations before it, and not the sealed excerpts of the tapes, it found that the meetings undisputably were bona-fide attorney-client conferences presumptively protected by the privilege, and that the Church had not waived the privilege. On the crime-fraud issue, the court held that the federal courts may not look at the contents of the communications themselves; the opponent of the privilege must demonstrate the existence of the exception

by prima facie independent evidence of a crime or fraud. It held that the IRS had not made the requisite showing, and upheld the privilege. See United States v. Zolin, 809 F.2d 1411 (9th Cir. 1987).

12. The Ninth Circuit granted review en banc on the question of whether the independent evidence rule is required in federal courts. The en banc court held that the independent evidence rule is required, and therefore vacated its en banc order as improvidently granted. United States v. Zolin, 842 F.2d 1135 (9th Cir. 1988). Judge Beezer dissented from the Ninth Circuit en banc decision, on the ground that the district court should have the discretion to review the contents of the communications. 842 F.2d at 1136-39. Significantly, even Judge Beezer found that Judge Hupp had acted well within his discretion in reviewing partial sealed transcripts of the MCCS tapes and upholding the privilege. Id. at 1139.

13. On October 17, 1988, the Supreme Court of the United States granted certiorari in the Zolin case on the question of the "independent evidence" rule. The case is presently scheduled to be heard in the March Term of the Supreme Court.

14. It is significant to note that even if the Supreme Court reverses the Ninth Circuit on the independent rule and agrees with Judge Beezer of the Ninth Circuit that district courts should have discretion to review the contents of the communications themselves, it is highly likely that Judge Hupp's decision on the merits of the attorney-client privilege will be

upheld. Judge Hupp, after all, did not apply the independent evidence rule, but reviewed extensive transcripts of the tapes in camera. Judge Beezer would have held that Judge Hupp acted within his discretion in upholding privileged.

15. The MCCS tapes have remained sealed in this court throughout all the proceedings described above. The reason for the seal has nothing to do with the general seal of the record imposed by Judge Breckenridge at the time of settlement. Rather, the tapes were sealed because they have been held to be privileged, and they never were entered into evidence or made part of a public file in this case.

I declare under penalty of perjury under the laws of New York and California that the foregoing is true and correct. Executed this 11th day of November, 1988 at New York, New York.



ERIC M. LIEBERMAN

DECLARATION OF JAMES M. A. MURPHY

I, JAMES M. A. MURPHY, do hereby declare as follows:

1. I am a partner in the law firm of Rosenfeld, Meyer and Susman and have been associated with the firm since November, 1977. I am admitted to practice in the States of California and New York.

2. I make this declaration to set forth the basic facts concerning Rosenfeld, Meyer and Susman's relationship with Laurel Sullivan, L. Ron Hubbard and the Church of Scientology of California, and the attorney-client relationship which this firm had with them.

3. In either late 1979 or early 1980 I was introduced to Laurel Sullivan. Ms. Sullivan was engaged in a project concerning the structure of the relationship between Mr. L. Ron Hubbard and the Church of Scientology in its corporate form. The project concerned primarily the future structure but was prompted by and concerned as well as a number of lawsuits already filed against the Church and/or Mr. Hubbard. This project was referred to as the Mission Corporate Category Sort Out ("MCCS"). This firm was retained because of our expertise in the areas of intellectual property, corporate and tax law, which were major areas of concern in the project on which we were consulted. More specifically, my areas of expertise are in the areas of tax and corporate law, and it is in those areas that I have concentrated my work for the past several years.

1 4. Ms. Sullivan was an individual with whom our firm
2 had substantial contact in terms of providing factual
3 information necessary for our rendering legal advice,
4 providing guidance as to the client's views and goals, and
5 receiving legal advice. At the time, an attorney with our
6 firm, Alan Wertheimer, was also involved in rendering legal
7 advice on these problems. Our firm and I considered the
8 various problems from the perspective of Mr. Hubbard. Many of
9 the problems with which we dealt concerned a sorting out of
10 various affairs between Mr. Hubbard and the Church of
11 Scientology, and we often dealt with problems on which there
12 was a mutuality of interest between Mr. Hubbard and the
13 Church. While the matters upon which we rendered advice were
14 obviously specific to the circumstances, the focus of our work
15 was similar to work for other clients, i.e., how to legally
16 achieve certain ends, and what legal options were available
17 for the structuring of corporate and individual relationships.
18 I have often been asked to provide legal advice on issues
19 similar to those which I gave in the course of the above
20 representation.

21 5. It was my understanding that all of the
22 communications between Ms. Sullivan, or others associated with
23 the project, and myself or my law firm concerning these
24 matters were intended to be confidential and are subject to
25 the attorney-client privilege. Equally, when matters of
26 mutual interest between Mr. Hubbard and the Church arose, and
27 there were communications with individuals representing the
28

1 Church's interests present, it was my understanding that
2 communications on such matters and the meetings themselves
3 were also intended to be confidential and are subject to the
4 attorney-client privilege. The privileged nature of the
5 relationship, and the consequent necessity to maintain
6 confidentiality, was understood by all concerned.

7 6. I have been advised that there is a question as to
8 the applicability of the attorney-client privilege to certain
9 meetings or conferences which occurred in late 1980. I recall
10 that, at that time, a series of discussions occurred, some at
11 our firm's offices, which involved individuals and attorneys
12 representing the interests of both the Church and Mr. Hubbard.
13 These meetings definitely were encompassed within the
14 attorney-client relationships I have described above. The
15 purpose of the meetings was to have a frank discussion
16 concerning the past relationships in order to enable the
17 participating attorneys to develop well-founded, legitimate
18 proposals for submission to the clients concerning the future
19 structuring of the relationship between the relevant parties,
20 notably Mr. Hubbard and the Church.

21 7. I am also advised that it is now claimed by various
22 parties that the purpose of the MCCS project was to perpetrate
23 some type of crime or fraud, and that the conferences which
24 were tape recorded were in furtherance of a crime or a fraud.
25 In relation to these allegations, I would like to advise the
26 court as follows:

27
28

1 A. From the inception of our firm's work on the MCCS
2 project, the objective was to eliminate legal
3 difficulties which potentially or in fact inhered in the
4 way that certain relationships presently existed, and to
5 solve problems in a lawful way so that any possible legal
6 difficulties would be diminished in the future.

7 B. The relationship which our firm had to this project
8 was regular and systematic -- entailing virtually daily
9 contact. Had we at any point had reason to believe that
10 we were being consulted for criminal or fraudulent
11 purposes, we would have withdrawn from our
12 representation, and there was never any question of our
13 in fact having to do so.

14 C. The types of problems which I advised on in this
15 matter were not unlike those on which I am commonly
16 consulted. As with many clients, there were questions
17 concerning whether certain things had been handled
18 properly in the past and how they should be handled in
19 the future. Such concerns are commonly the subject of
20 advice which attorneys render.

21 8. I consider myself bound by the attorney-client
22 privilege with respect to these matters and have no authority
23 nor intention to waive the privilege. In providing the Court
24 with the general description of my firm's relationship, I do
25 so to demonstrate that Ms. Sullivan was, with respect to our
26 firm, the representative of a client with whom, it was our
27 understanding, we had a confidential lawyer-client

28

1 relationship. If I were not constrained by the privilege, I
2 could of course elaborate in greater detail on all of these
3 matters.

4 I declare, under penalty of perjury, that the foregoing
5 is true and correct.

6 Executed at Los Angeles, California on January 21, 1985.

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8 
9 JAMES M. A. MURPHY

10 AMS6:ARM-JM.DOC

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EXHIBIT D
PAGE 53

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOUNDING CHURCH OF SCIENTOLOGY
OF D.C., INC.,

Plaintiff,

v.

DIRECTOR, FEDERAL BUREAU OF
INVESTIGATION, et al.,

Defendants.

Civil Action No.
78-0107

JUDGE JOYCE GREEN

DECLARATION

I, LISA BRITOWICH, declare and say:

1. I am a former staff member of the Church of Scientology.

During the fall of 1980 I was a member of the Church's Legal Bureau. During that time I participated in a special project called the Mission Corporate Category Sort-out.

2. The purpose of the MCCS project was to clarify and legally define the Scientology corporate structure. Various matters, including the relationship between the different Scientology organizations, between the Church's corporate status and ecclesiastical matters, between the Church as an organization and L. Ron Hubbard, the Founder of the Religion of Scientology all required attention. As the name of the project makes clear, those of us on this mission were trying to sort out the various legal relationships noted above. This was carried out for the purpose of providing factual information to the attorneys representing the various entities involved, so that informed legal advice could be provided.

3. These meetings were in part an effort to clarify where the Church stood in relation to the large number of lawsuits that had been filed against it. Over the years the Church's corporate structure and corporate affairs had not been given the attention they needed. Many different people have been involved in the corporate matters at different times, not all of whom were familiar with past events, or who were expert in these matters. Thus, the Church's corporate affairs were sorely in need of re-examination. The heavy litigation which hit the Church in the 1980's served to signal the Church legal people that even determining which corporate body might be liable, required such a project. Once this project got

EXHIBIT A

underway, it became evident that, because of L. Ron Hubbard's position as Founder and his many years of contributions to the Church, any sort-out of the Church's affairs would have to take into account L. Ron Hubbard's affairs.

4. Two meetings which were tape recorded and which are described by Mr. Armstrong in his declaration were part of a series of meetings held during that time by members of the mission and various attorneys.

5. The individuals that I recall being present at these meetings included the following: Laurel Sullivan, a Church of Scientology member in over-all charge of the mission and assigned by the Church to represent Mr. Hubbard's interests in his absence; Alan Werthelmer, retained by the Church to represent Mr. Hubbard's legal interests; Church representatives Charles Parselle, an English barrister and head of the Church's legal department, holding the post of Deputy Guardian Legal, Worldwide and who functioned as the Church's general counsel on an international level; Dick Sullivan, representing Golden Era Studios, a film production studio affiliated with the Church of Scientology and myself, a member of the Church's legal department. At certain of these meetings there was an attorney retained by Golden Era Studios, Ron Fujiwaka, although I am not certain whether he was present during the specific meetings referred to by Mr. Armstrong.

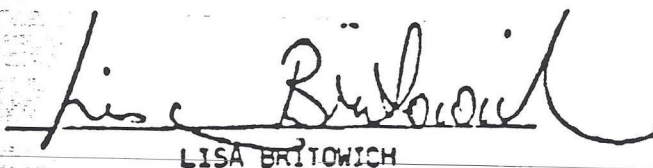
6. This somewhat unusual form of legal consultation was necessitated by the fact that the Church was unable to communicate with Mr. Hubbard, and at the same time felt a legal, moral and ethical obligation to have his interests protected and represented in sorting out Church legal matters which affected him.

7. I do recall these meetings very well. They were definitely considered attorney-client conferences which were fully intended to be confidential and privileged. The substance of the conferences included discussions of factual information with the attorneys. The purpose, as noted above, was to clarify the legal relationship between the Church and Mr. Hubbard, to ensure the integrity of the parties, and determine any actions necessary to protect all parties' legal interests. This was considered particularly necessary because of pending civil damage suits, alleging acts of the Church as the basis for recovery, and naming Mr. Hubbard and the Church as co-defendants on a theory of joint participation in alleged torts.

8. ~~Jim~~ Armstrong held the position of Archives I/C (In Charge) within the ~~Club~~ his office was located near the legal department. Mr. Armstrong ~~has~~ participated in any of the conferences themselves, or other business ~~of the~~ project. So far as I am aware, he was not given authority to take ~~the~~ tapes, or copy them for his own use. Certainly I was never ~~approach~~ by anyone and asked whether such a disclosure was being consented ~~to~~ me, and I never gave such permission.

I ~~swear~~ ~~under~~ penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on 10 December 1984.



LISA BRITOVICH

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----	X		
FOUNDING CHURCH OF SCIENTOLOGY	:		
OF D.C., INC.,	:		
	:		
Plaintiff,	:	Civil Action No.	
	:	78-0107	
v.	:	JUDGE JOYCE GREEN	
	:		
DIRECTOR, FEDERAL BUREAU OF	:		
INVESTIGATION, et al.,	:		
	:		
Defendants.	:		
-----	X		

I, BARBARA DE CELLE, declare as follows:

1. I am a member of the Church of Scientology. This declaration is based upon my personal knowledge, and I can competently testify thereto if called as a witness.

2. In 1980 I was employed by a division of the Church and was assigned to secretarial duties for a temporary unit established within the Church of Scientology of California.

3. The project to which I was assigned involved communications back and forth between members of the project and various attorneys retained by the Church. It was my understanding that the matters upon which the project worked were highly confidential and were not to be disclosed outside of the individuals on the project and those responsible for the project. It was my further understanding that the communications between those of us on the project and the attorneys retained to advise us were all confidential.

4. At a certain point in time, Laurel Sullivan, who was in charge of the overall project, asked me to transcribe certain tapes of meetings between members of the project and certain attorneys. It was my understanding that the substance of the tapes and the tapes themselves were confidential. I did transcribe the tapes and when finished I placed the tapes in a secure place in my desk.

5. I can unequivocally state that the tapes were kept in my desk drawer when I was not transcribing them. I have no recollection of ever giving the tapes to Mr. Armstrong. I can state that if Mr. Armstrong had asked me for the tapes, I would not have given the tapes to him so long as the tapes still reflected the recordings of the meetings.

6. I was at no time authorized to disclose the tapes or the discussions recorded upon the tapes to Mr. Armstrong.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on ~~October~~ ^{DECEMBER 21st.} 9,

1984.



BARBARA DE CELLE

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

4 CHURCH OF SCIENTOLOGY OF CALIFORNIA,)

5 Plaintiff,)

6 vs.)

7 GERALD ARMSTRONG,)

8 Defendant.)

9 MARY SUE HUBBARD,)

10 Intervenor.)

11 / 2-25
No. C 420 153

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 MONDAY, FEBRUARY 11, 1985

14 APPEARANCES:

15 (See next page)

16 COPY

17 NANCY L. HARRIS, CSR #644
18 Official Reporter

19 EXHIBIT E

1 We were using general language or language
2 that seemed to be conditional merely out of an abundance
3 of caution with respect to the Church. We didn't want to
4 make an accusation that we couldn't prove.

5 Finally the MCCS project was clearly a
6 planning project. It wasn't a project based on just the
7 review of historical facts. I believe Mr. Murphy's
8 declaration, also the Church brief makes it quite clear
9 that the purpose of MCCS was perhaps to plan in light of
10 past facts, but certainly above all else to plan for the
11 future.

12 That concludes my remarks, Your Honor.

13 | THE COURT: Well, I guess I have heard you gentlemen
14 talking for some time and I have had a lot of thoughts
15 about this thing for a long time, and I start up with the
16 proposition that at the trial I was not satisfied there was
17 a waiver and nothing has been submitted to me since that
18 would convince me to change my position that there was not
19 a waiver.

20 As I recall the evidence and the declaration,
21 the tape was given to Mr. Armstrong with the apparent
22 belief that it was blank and he would use it for
23 dictating and for other purposes in the course of the
24 biography project.

25 As far as the crime fraud exception, of
26 course, I accept the California law that you can't look
27 at the conversation itself to make that determination. You
28 have to find other independent evidence. Mr. Flynn had a

1 lot of problem with that at the trial, I remember, and
2 so I operate from that assumption. If I am wrong, I am
3 wrong. But I operate from the assumption I cannot look
4 at what is on the tape to determine whether the crime fraud
5 exception applies.

6 Now, Mr. Armstrong's and Miss Sullivan's
7 declarations. Of course, they testified at the trial and
8 one of the problems that we had in the trial of this was
9 that a lot of information that Miss Sullivan became aware
10 of in this project was information that she became aware
11 of as part of this attorney-client situation. This
12 information that she became aware of and didn't want to
13 take the time or the effort at that time to try to sort it
14 out and try to figure out what perhaps she knew from her
15 previous experiences and that which she acquired as working,
16 in effect, as a legal assistant preparing for the Sort-Out
17 project.

18 I have already indicated I don't have any
19 quarrel with the credibility of Mr. Murphy. I am
20 satisfied that he was acting honestly and in good faith.
21 It brings us down to a problem of where this attorney-
22 client privilege stands and the role of the attorney,
23 while I suppose it has been denigrated in the public media
24 from time to time, it still plays an important role in our
25 society and in the manner in which we deal with the
26 courts and government and so forth. I think that probably
27 on balance that the public policy which favors full and
28 open communication between a client and lawyer has to

1 prevail over the suggestion that there was some secret
2 intent on the part of the person who is communicating with
3 the lawyer.

4 It would be too easy to set aside the
5 privilege if that were the fact, at least in the absence
6 of very strong evidence to that effect.

7 So, I am going to sustain the privilege solely
8 as to what is on that tape. I don't want anybody suggesting
9 that I have gone any further than that. Just as to what is
10 on that tape is concerned, I am finding that privileged.
11 I will sustain the objection.

12 MR. HERTZBERG: You mean both tapes?

13 THE COURT: Is there more than one?

14 MR. HERTZBERG: There are two tapes.

15 THE COURT: Whatever is here. I don't know what is
16 on them other than some reference to partial transcripts,
17 so that is the order.

18 Now, so far as this sealing, which affidavit
19 do you want sealed? Do you want me to order some affidavits
20 in some other litigation are sealed?

21 MR. COPELAND: No, Your Honor. We think that what
22 is here in front of Your Honor is the affidavits that have
23 been filed here. The situation is as follows, and I think
24 it will be very simple to deal with, Your Honor, and I
25 will not revisit any of the arguments that have come up.

26 There is the Armstrong affidavit in which
27 he sets forth the various, what he purports to be
28 transcriptions of the tapes that Your Honor just upheld the

Date FEB. 11, 1985

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

HONORABLE P G BRECKENRIDGE, JR JUDGE
Deputy Sheriff
J SALGADO Court Attendant

R HART Deputy Clerk
N HARRIS Reporter
(Parties and counsel checked if present)

C 420 153
CHURCH OF SCIENTOLOGY OF CALIFORNIA,
VS
GERALD ARMSTRONG,

Counsel for Litt & Stomer for Intervenor
Plaintiff BY: Michael S. Magnuson
Peterson & Brynan for Plff
Counsel for BY: John G. Peterson
Defendant Michael Lee Hertzberg -Pro Hac
Vice for Plff and Intervenor
Overland, Berke, Wesley, Gits,

MARY SUE HUBBARD-INTERVENOR

~~NATURE OF PROCEEDINGS~~

BY: Jeffrey B. O'Toole

Randolph & Levanas for X-erts
BY: Donald C. Randolph
O'Roole, Bisceglie & Walsh-Pro Hac Vi
for plff in Washington case
Rabinowitz, Boudin, Standard,
Krinsky & Lieberman -Washington case
BY: Edward Copeland
United States Attorney
BY: John W. Toothman and
Janet M. McClintock
for moving party

NATURE OF PROCEEDINGS:

SECOND NOTICE OF MOTION OF THE UNITED STATES, A NON PARTY, TO INSPECT AND COPY CERTAIN SEALED DOCUMENTS

Motion resumes from Dezember 3, 1984.

Responding party objects to this Court hearing any further matters until the issue of the 170.6 is resolved by the Appellate Court. Request of responding party for a Stay until the "...Appellate Process has run its course", is denied.

Motion argued.

Motion denied as to exhibits 500-4D's through 4i's, 5C's, 5G's, 5i's, 6B's and 6O's; Motion granted as to exhibits 500-4Q's, 5K's, 5L's, 5O's, 5P's and 5Q's.**The Court finds a waiver of the privilege and further as to exhibit 500-5K's, said exhibit does not fall within the spousal provilege.

Motion of responding party for an order sealing the declarations of Sullivan and Armstrong, granted; said declarations are sealed for this proceeding only.

STAY OF EXECUTION IS GRANTED FOR TEN DAYS.

Counsel for moving party to prepare an order including a protective order, serve on responding party and submit to the Court for signature.

**subject to protective order

(2)

DEPT. 57

MINUTES ENTERED
2-11-85
COUNTY CLERK

RECEIVED
MAY 02 1985
As'd.....

FILED
APR 30 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *Lm* DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Petitioner,

vs.

FRANK S. ZOLIN, CLERK
OF THE SUPERIOR COURT,

Respondent.

CHURCH OF SCIENTOLOGY
OF CALIFORNIA,

Intervenor.

NO. CV 85-0440-HLH
ORDER

The Court makes the following Orders and Findings:

1. Reconsideration is denied as to Exhibits 5G and 5I; the Order of March 12, 1985 will stand.
2. Intervenor Church has failed to raise any doubt of the good faith of the Internal Revenue Service in pursuing this summons enforcement proceeding. Specifically, it is found that a bona fide criminal tax investigation of T. Ron Hubbard is being conducted by the IRS for the years 1979-83, that the matter has not been

1 referred to the Department of Justice for prosecution, that the
2 summons was validly issued pursuant to that investigation, that
3 the agent issuing the summons was in good faith in doing so, and
4 did not do so for an improper purpose, or to harass the taxpayer,
5 or for a collateral purpose. No further discovery on this issue
6 is warranted.

7 3. With the exception of Exhibits 6B and 5C (the "MCCS
8 tapes"), the Court finds that all potentially applicable privil-
9 eges (attorney-client, marital) have been waived by voluntary
10 delivery of the material to Gerald Armstrong. In addition, no
11 privilege has been validly asserted by the holder of a potential
12 privilege as to certain items (Exhibits 5L and 5P).

13 4. Sufficient relevancy being shown, the IRS is entitled
14 to inspect and copy Exhibits 5K, 5L, 5O, 5P and 6O, and the
15 summons is to be enforced as to those items.

16 5. No relevancy or waiver has been shown for Exhibit 6B,
17 and it need not be produced.

18 6. As to Exhibit 5C (the "MCCS tapes"), the Court finds:

19 (a) The tapes consist of confidential communications
20 between attorneys and clients or clients' authorized agents.

21 (b) The confidential communications were between
22 clients and their attorneys who had a common interest; the privi-
23 lege was, therefore, not destroyed by publication of the communi-
24 cation to an outsider.

25 (c) There was no waiver of the privilege by delivery
26 to an outsider, the Court finding that the tapes were delivered to
27 Gerald Armstrong by mistake, and, in addition, that Petitioner has
28 not carried the burden of showing waiver.

1 (d) The "fraud-crime" exception to the attorney-
2 client privilege does not apply. The quoted excerpts tend to
3 show or admit past fraud but there is no clear indication that
4 future fraud or crime is being planned.

5 (e) The Order sealing the Petersell affidavit (filed
6 March 15, 1985) quoting excerpts from the tapes will remain sealed.

7 (f) This Court's copy of the tapes will remain sealed
8 in possession of the Court's Clerk until after any appellate
9 review of this Order, after which it is to be returned to the
10 Superior Court. The Clerk of the Superior Court need not produce
11 its copy of the tapes pursuant to the summons.

12 7. The documents delivered hereunder shall not be deliv-
13 ered to any other government agency by the IRS unless criminal
14 tax prosecution is sought or an Order of Court is obtained.

15 Petitioner is to prepare an Order in accord with this
16 Order and the Order of March 12, 1985. This Order is stayed for
17 sixty (60) days, and thereafter if an appeal or application for
18 a writ is filed and until decision on appeal or writ application
19 is rendered.

20 IT IS SO ORDERED.

21 DATED: April 30, 1985.

22 
23 HARRY L. HUPP
United States District Judge

24 A copy of this Order mailed to:
25 Charles H. Magnuson, Asst. U.S. Attorney
26 Donald C. Randolph, Esq.
27 Gordon Trask, County Counsel
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On November 15, 1988, I caused to be served the foregoing document described as PLAINTIFF/INTERVENOR'S AND CROSS-DEFENDANT'S MOTION FOR CLARIFICATION AND/OR TO PRESERVE SEAL ON ONE DOCUMENT PREVIOUSLY HELD EXCLUDED FROM EVIDENCE AND HELD TO BE PROTECTED BY ATTORNEY-CLIENT PRIVILEGE AND FIVE ADDITIONAL DOCUMENTS PREVIOUSLY EXCLUDED FROM EVIDENCE AND MAINTAINED UNDER SEAL; MEMORANDUM IN SUPPORT OF MOTION FOR CLARIFICATION AND/OR RECONSIDERATION TO PRESERVE SEAL ON ONE DOCUMENT PREVIOUSLY HELD EXCLUDED FROM EVIDENCE AND HELD TO BE PROTECTED BY ATTORNEY-CLIENT PRIVILEGE, AND FIVE ADDITIONAL DOCUMENTS PREVIOUSLY EXCLUDED FROM EVIDENCE AND MAINTAINED UNDER SEAL on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

SEE ATTACHED LIST.

If hand service is indicated on the attached list, I caused this to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on November 15, 1988 at Hollywood, California.



SERVICE LIST

Toby Plevin **HAND SERVED**
SAYRE, MORENO, PURCELL & BOUCHER
10866 Wilshire Boulevard
Fourth Floor
Los Angeles, CA 90024

Paul Morantz **HAND SERVED AT PO BOX**
P.O. Box 511
Pacific Palisades, CA 90272